

KEYWORD: Financial

DIGEST: Applicant is a retired Navy petty officer and has been an employee of defense contractors for about ten years. He has a history of significant financial problems and he is currently unable to pay his delinquent debts totaling more than \$17,000.00. Applicant provided no information demonstrating how his financial problems arose or what he has done to resolve them. Applicant failed to mitigate security concerns arising under the guideline for financial considerations. He has not met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance. Clearance is denied.

CASENO: 06-25755.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-25755
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL J. BRESLIN**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq. Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a retired Navy petty officer and has been an employee of defense contractors for about ten years. He has a history of significant financial problems and he is currently unable to pay his delinquent debts totaling more than \$17,000.00. Applicant provided no information demonstrating how his financial problems arose or what he has done to resolve them. Applicant failed to mitigate security concerns arising under the guideline for financial considerations. He has not met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On March 23, 2005, Applicant submitted an SF 86, Security Clearance Application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (the "Directive"), as amended; and the new adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. On February 28, 2007, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under the Directive, Guideline F, Financial Considerations.

Applicant answered the SOR in writing on March 26, 2007. He elected to have the matter decided without a hearing.

Department Counsel submitted the government's case in a File of Relevant Material (FORM) dated June 7, 2007. On June 14, 2007, Department Counsel mailed a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On June 20, 2007, Applicant received the FORM. He did not submit any additional materials within the specified 30-day period. The case was assigned to me on August 15, 2007.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR. (Item 3.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 55 years old. (Item 4 at 1.) He is an outside machinist for a defense contractor. (*Id.* at 2.)

Applicant enlisted in the U.S. Navy Reserves in October 1970, and rose through the ranks to Petty Officer Second Class. (*Id.* at 4.) He separated from the Navy Reserves in October 1976. (*Id.*)

He married in 1974. (*Id.* at 3-4.) Between April 1974 and December 1980, he worked as a preservation servicer for a military installation. (*Id.* at 3.)

In December 1980, Applicant re-enlisted in the U.S. Navy, and entered active duty. (*Id.* at 4.) He was later promoted to Petty Officer First Class. He retired from the Navy in February 1996. (*Id.*)

Applicant was unemployed between about February and April 1996. (*Id.* at 2.) He then began working as an outside machinist for a federal contractor and served in that position until May 1997. (*Id.*) He was unemployed from May until July 1997. Applicant worked for another defense contractor for about one month, and was unemployed again from about August to December 1997. (*Id.*) Since 1997, Applicant has worked as an outside machinist for three federal contractors without a significant period of unemployment.

In November 2002, Applicant and his wife filed jointly for bankruptcy protection under Chapter 7 of the Bankruptcy Code. (Item 4 at 6; Item 5 at 1.) The record does not include a copy of the bankruptcy documents. The action was later dismissed. (Item 3.)

In March 2005, Applicant submitted an SF 86, Security Clearance Application. (Item 4.) In response to questions on the form, he reported the petition for bankruptcy and several financial delinquencies. (*Id.*) Investigators obtained a credit bureau report, dated February 2007, that listed four seriously delinquent accounts. (Item 5.) These include a delinquent credit card account in the amount of \$1,196.00 (SOR, ¶ 1.b), a charged off debt to a creditor in the amount of \$4,079.00 (SOR, ¶ 1.c), a delinquent debt to a collection agency for \$988.00 (SOR, ¶ 1.d), and an overdue loan for an automobile in the amount of \$11,413.00 (SOR, ¶ 1.e). (Item 5.) Applicant admitted these debts. (Item 3.)

In December 2006, security investigators requested that he respond to interrogatories. (Item 6.) Applicant provided a personal financial statement showing his normal, monthly living expenses. He indicated he was then unable to make arrangements to pay any of his delinquent debts. (*Id.*)

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” (AG, ¶ 2.) An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in ¶ 18 of the new adjudicative guidelines.

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under ¶ 19(c),

“a history of not meeting financial obligations” may raise security concerns. As noted above, Applicant had significant financial problems for several years and he is currently unable to pay or resolve some substantial delinquent debts. I find the available evidence raises these potentially disqualifying conditions.

The guideline also includes several conditions that could mitigate security concerns raised under this guideline. Paragraph 20(a) may apply where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” The behavior in question is the non-payment of delinquent debts. The financial obligations in question remain unresolved; therefore, I find the behavior is recent. It also appears there were several unpaid debts that accumulated over a period of time; thus, I cannot find this was an infrequent event. Finally, Applicant provided no information about the origin of these debts, or any actions he has taken to resolve them, therefore he has failed to demonstrate they are unlikely to recur.

Under ¶ 20(b), it may be mitigating where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” The available information indicates Applicant experienced several periods of unemployment in 1997. It is not clear, however, whether this caused or contributed to his financial problems; he was steadily employed for about four years before he filed for bankruptcy, and has been employed continuously since then. Applicant offered no statement or other information shedding any light on his personal circumstances, therefore I am unable to find that this potentially mitigating condition applies.

Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under ¶ 20(c). Similarly, ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” There is no information Applicant received any counseling. Furthermore, he indicated he is unable to make any payments on his delinquent debts. The evidence does not raise this potentially mitigating condition.

Whole Person Concept

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the “whole person” concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of national security. I considered the nature, extent, and seriousness of the conduct. The available evidence shows Applicant has a history of significant financial problems and he is currently unable to pay his delinquent debts. Unfortunately, Applicant provided no information demonstrating how his financial problems arose, or what he has done to resolve them. For this reason, I cannot assess the extent of his rehabilitation or another pertinent behavioral change, or determine the likelihood of continuation or recurrence. Considering all the evidence, I conclude Applicant has not met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin
Administrative Judge